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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/751,580

01/05/2004

Kazuhisa Ueki

YAMA:063

3104

7590

07/27/2006

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EXAMINER

WARREN, DAVID S

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/751,580

Applicant(s)

UEKI, KAZUHISA

Examiner

David S. Warren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5 and 6 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/17/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imaizumi (5,164,531) in view of Machover (5,850,051). Regarding claims 1 and 6, Imaizumi discloses the use of a storage device that stores performance data (col. 10, lines 10 – 30) and accompaniment data having a plurality of sections (col. 9, lines 30 – 41), a detector for detecting a specific note (col. 11, lines 27 – 39), a reproduction device for simultaneously reproducing the performance data and the accompaniment pattern (40; the term “accompaniment” is synonymous with simultaneous reproduction), and a controller for controlling the reproduction device to change the section of an accompaniment (col. 19, lines 51 – 66). Imaizumi does not show changing the section in accordance with the detection of a note (however, Imaizumi does disclose changing the accompaniment via a detected chord; see the paragraph bridging cols. 11 and 12). Machover discloses changing an accompaniment section in accordance with a detected parameter (such as a note; col. 37 lines 55 - 60). The Examiner acknowledges that

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Machover changes patterns based on notes while Imaizumi changes accompaniment sections based on detecting chords. However, the end result of Machover is functionally equivalent to that of Imaizumi, i.e., to change the accompaniment pattern at a given point in time. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Imaizumi and Machover to obtain an automatic performance apparatus to provide for changing an accompaniment pattern based on a detected note. The motivation for making this combination is to provide a one-finger accompaniment apparatus to allow inexperienced musicians to easily experiment with (or audition) different patterns. Regarding claims 2 and 5, the performance data of both Imaizumi and Machover will both, inherently, have a first note and a last note. Both Imaizumi and Machover change accompaniment patterns by detecting a note (or chord, a plurality of notes, in Imaizumi). Imaizumi discloses plural "normal patterns," plural fill-in patterns, and plural ending patterns – these patterns are synonymous with Applicant's second and fifth patterns.

Allowable Subject Matter

3. Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not disclose the use of altering an automatic accompaniment pattern based on a blank section of the performance data. The Examiner is interpreting the Applicant's performance data as

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being data other than the accompaniment data. The prior art cited by the Applicant discloses muting performance data to play an accompaniment pattern, this is not the same as detecting a muted (or blank) portion and selecting an accompaniment section based on the blank portion.

Conclusion

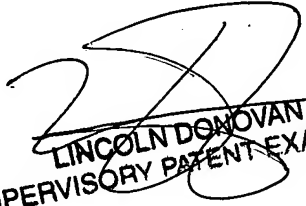
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Oya (4,381,689) discloses the use of detecting a note to control automatic accompaniment patterns (or sections). Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

dsw


LINCOLN DONOVAN
SUPERVISORY PATENT EXAMINER